

# HOUSE BILL No. 1305

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-9-48.7; IC 6-9-48.8.

**Synopsis:** Rush County and Rushville food and beverage tax. Authorizes Rush County to adopt a county food and beverage tax after April 30, 2016, and before November 1, 2016. Provides that the tax rate may not exceed 1%. Provides that money received from the tax shall be distributed by the treasurer of state as follows: (1) 50% to the county. (2) 50% to the city of Rushville. Specifies that if Rush County does not adopt a food and beverage tax before November 1, 2016, the city of Rushville may adopt a municipal food and beverage tax after October 31, 2016. Provides that the tax rate may not exceed 1%. Provides that money received from the tax shall be distributed by the treasurer of state to the city of Rushville. Specifies the uses to which receipts from the food and beverage tax may be applied.

**Effective:** May 1, 2016.

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## Saunders, Ziemke

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January 12, 2016, read first time and referred to Committee on Ways and Means.

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Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## HOUSE BILL No. 1305

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 6-9-48.7 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 MAY 1, 2016]:

4       **Chapter 48.7. Rush County Food and Beverage Tax**

5       **Sec. 1. This chapter applies to Rush County.**

6       **Sec. 2. The definitions in IC 6-9-12-1 apply throughout this**  
7 **chapter.**

8       **Sec. 3. (a) This section applies only after April 30, 2016, and**  
9 **before November 1, 2016.**

10       **(b) The fiscal body of the county may adopt an ordinance to**  
11 **impose an excise tax, known as the county food and beverage tax,**  
12 **on transactions described in section 4 of this chapter. The fiscal**  
13 **body of the county may adopt an ordinance under this subsection**  
14 **only after the fiscal body has previously held at least one (1)**  
15 **separate public hearing in which a discussion of the proposed**  
16 **ordinance to impose the county food and beverage tax is the only**  
17 **substantive issue on the agenda for that public hearing.**



(c) If the county fiscal body adopts an ordinance under subsection (b), the county fiscal body shall immediately send a certified copy of the ordinance to the department of state revenue.

(d) If the county fiscal body adopts an ordinance under subsection (b), the county food and beverage tax applies to transactions that occur after the later of the following:

(1) The day specified in the ordinance.

(2) The last day of the month that succeeds the month in which the ordinance is adopted.

Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this chapter applies to a transaction in which food or beverage is furnished, prepared, or served:

(1) for consumption at a location or on equipment provided by a retail merchant;

(2) in the county; and

(3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

(1) served by a retail merchant off the merchant's premises;

(2) food sold in a heated state or heated by a retail merchant;

(3) made of two (2) or more food ingredients, mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or

(4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or package used to transport the food).

(c) The county food and beverage tax does not apply to the furnishing, preparing, or serving of a food or beverage in a transaction that is exempt, or to the extent the transaction is exempt, from the state gross retail tax imposed by IC 6-2.5.

Sec. 5. The county food and beverage tax rate:

(1) must be imposed in an increment of twenty-five hundredths percent (0.25%); and

(2) may not exceed one percent (1%);

of the gross retail income received by the merchant from the food



1 or beverage transaction described in section 4 of this chapter. For  
 2 purposes of this chapter, the gross retail income received by the  
 3 retail merchant from a transaction does not include the amount of  
 4 tax imposed on the transaction under IC 6-2.5.

5 Sec. 6. A tax imposed under this chapter shall be imposed, paid,  
 6 and collected in the same manner that the state gross retail tax is  
 7 imposed, paid, and collected under IC 6-2.5. However, the return  
 8 to be filed with the payment of the tax imposed under this chapter  
 9 may be made on a separate return or may be combined with the  
 10 return filed for the payment of the state gross retail tax, as  
 11 prescribed by the department of state revenue.

12 Sec. 7. The amounts received from the tax imposed under this  
 13 chapter shall be paid monthly by the treasurer of state as follows:

14 (1) Fifty percent (50%) of the amounts received from the tax  
 15 to the fiscal officer of the county upon warrants issued by the  
 16 auditor of state.

17 (2) Fifty percent (50%) of the amounts received from the tax  
 18 to the fiscal officer of the city of Rushville upon warrants  
 19 issued by the auditor of state.

20 Sec. 8. (a) If a tax is imposed under section 3 of this chapter by  
 21 the county, the fiscal officer of the county and the fiscal officer of  
 22 the city of Rushville shall each establish a food and beverage tax  
 23 receipts fund.

24 (b) The fiscal officer shall deposit in the fund all amounts  
 25 received under this chapter.

26 (c) Money earned from the investment of money in the fund  
 27 becomes a part of the fund.

28 Sec. 9. Money in the food and beverage tax receipts funds  
 29 established under section 8 of this chapter must be used by the  
 30 county or the city of Rushville for the following purposes:

31 (1) For economic development purposes, including the pledge  
 32 of money under IC 5-1-14-4 for bonds, leases, or other  
 33 obligations for economic development purposes.

34 (2) Construction, renovation, improvement, equipping, or  
 35 maintenance of a theater facility.

36 (3) Public safety.

37 (4) Parks and recreation.

38 (5) The pledge of money under IC 5-1-14-4 for bonds, leases,  
 39 or other obligations incurred for a purpose described in  
 40 subdivisions (2) through (4).

41 Revenue derived from the imposition of a tax under this chapter  
 42 may be treated by the county or the city of Rushville as additional



revenue for the purpose of fixing its budget for the budget year during which the revenues are to be distributed to the county or the city of Rushville.

**Sec. 10.** With respect to obligations for which a pledge has been made under section 9 of this chapter, the general assembly covenants with the holders of the obligations that this chapter will not be repealed or amended in a manner that will adversely affect the imposition or collection of the tax imposed under this chapter if the payment of any of the obligations is outstanding.

SECTION 2. IC 6-9-48.8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE MAY 1, 2016]:

**Chapter 48.8. Rushville Food and Beverage Tax**

**Sec. 1.** This chapter applies beginning after October 31, 2016.

**Sec. 2.** This chapter applies to the city of Rushville.

**Sec. 3.** This chapter does not apply if Rush County adopts a county food and beverage tax under IC 6-9-48.7-3.

**Sec. 4.** The definitions in IC 6-9-12-1 apply throughout this chapter.

**Sec. 5. (a)** The fiscal body of the city may adopt an ordinance to impose an excise tax, known as the city food and beverage tax, on transactions described in section 6 of this chapter. The fiscal body of the city may adopt an ordinance under this subsection only after the fiscal body has previously held at least one (1) separate public hearing in which a discussion of the proposed ordinance to impose the city food and beverage tax is the only substantive issue on the agenda for that public hearing.

**(b)** If the city fiscal body adopts an ordinance under subsection (a), the city fiscal body shall immediately send a certified copy of the ordinance to the department of state revenue.

**(c)** If the city fiscal body adopts an ordinance under subsection (a), the city food and beverage tax applies to transactions that occur after the later of the following:

**(1)** The day specified in the ordinance.

**(2)** The last day of the month that succeeds the month in which the ordinance is adopted.

**Sec. 6. (a)** Except as provided in subsection (c), a tax imposed under section 5 of this chapter applies to a transaction in which a food or beverage is furnished, prepared, or served:

**(1)** for consumption at a location or on equipment provided by a retail merchant;

**(2)** in the city; and



(3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

(1) served by a retail merchant off the merchant's premises;

(2) food sold in a heated state or heated by a retail merchant;

(3) made of two (2) or more food ingredients, mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or

(4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or package used to transport the food).

(c) The city food and beverage tax does not apply to the furnishing, preparing, or serving of a food or beverage in a transaction that is exempt, or to the extent the transaction is exempt, from the state gross retail tax imposed by IC 6-2.5.

Sec. 7. The city food and beverage tax rate:

(1) must be imposed in an increment of twenty-five hundredths percent (0.25%); and

(2) may not exceed one percent (1%);

of the gross retail income received by the merchant from the food or beverage transaction described in section 6 of this chapter. For purposes of this chapter, the gross retail income received by the retail merchant from a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

Sec. 8. A tax imposed under this chapter shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return to be filed with the payment of the tax imposed under this chapter may be made on a separate return or may be combined with the return filed for the payment of the state gross retail tax, as prescribed by the department of state revenue.

Sec. 9. The amounts received from the tax imposed under this chapter shall be paid monthly by the treasurer of state to the city fiscal officer upon warrants issued by the auditor of state.

Sec. 10. (a) If a tax is imposed under section 5 of this chapter by



1 the city, the city fiscal officer shall establish a food and beverage  
2 tax receipts fund.

3 (b) The city fiscal officer shall deposit in the fund all amounts  
4 received under this chapter.

5 (c) Money earned from the investment of money in the fund  
6 becomes a part of the fund.

7 **Sec. 11. Money in the food and beverage tax receipts fund must**  
8 **be used by the city for the following purposes:**

9 (1) For economic development purposes, including the pledge  
10 of money under IC 5-1-14-4 for bonds, leases, or other  
11 obligations for economic development purposes.

12 (2) Construction, renovation, improvement, equipping, or  
13 maintenance of a theater facility.

14 (3) Public safety.

15 (4) Parks and recreation.

16 (5) The pledge of money under IC 5-1-14-4 for bonds, leases,  
17 or other obligations incurred for a purpose described in  
18 subdivisions (2) through (4).

19 Revenue derived from the imposition of a tax under this chapter  
20 may be treated by the city as additional revenue for the purpose of  
21 fixing its budget for the budget year during which the revenues are  
22 to be distributed to the city.

23 **Sec. 12. With respect to obligations for which a pledge has been**  
24 **made under section 11 of this chapter, the general assembly**  
25 **covenants with the holders of the obligations that this chapter will**  
26 **not be repealed or amended in a manner that will adversely affect**  
27 **the imposition or collection of the tax imposed under this chapter**  
28 **if the payment of any of the obligations is outstanding.**

29 **SECTION 3. An emergency is declared for this act.**

